

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PETER CALIFANO,

96 CV 3761

Petitioner,

MEMORANDUM
AND
ORDER

-against-

UNITED STATES OF AMERICA,

Respondent.

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PETER CALIFANO
No. 38203-053
P.O. Box 979137
Miami, FL 33197
petitioner pro se

ZACHARY W. CARTER, United States Attorney
Easter District of New York
(Jonathan S. Sack, of counsel)
One Pierrepont Plaza, 14th Fl.
Brooklyn, New York 11201
for respondent.

NICKERSON, District Judge:

Petitioner pro se brought this proceeding pursuant to 28 U.S.C. § 2255. He now moves for reconsideration of the order by this court of June 11, 1997 denying petitioner's motion for a sentence correction.

In 1996, this court granted petitioner a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2), which

authorizes a reduction when a guideline level is changed by an amendment that is to be applied retroactively. Amendment 505 to the Sentencing Guidelines changed the guideline level relevant to petitioner's sentence and, applied retroactively as directed by U.S.S.G. § 1B1.10(c), resulted in a four-level base offense reduction for petitioner.

Petitioner then moved for an additional correction to his sentence. The court denied that motion on June 11, 1997. Petitioner now moves for reconsideration of that order.

Motions for reconsideration are committed to the discretion of the district court. See McCarthy v. Manson, 714 F.2d 234, 237 (2d Cir. 1983). The standard for a motion for reconsideration is strict. See Yankelevitz v. Cornell University, 1997 WL 115651 at *2 (S.D.N.Y.) (a motion for reconsideration "is not a mechanism to allow parties to relitigate contentions and arguments already briefed, considered and decided."). The court must reconsider its rulings only where it has "overlooked controlling decisions or factual matters put before it on the underlying

motion," In re New York Asbestos Litigation, 847 F. Supp. 1086, 1141 (S.D.N.Y. 1994), and which, had they been considered, "might reasonably have altered the result before the court." Consolidated Gold Fields v. Anglo American Corp., 713 F. Supp. 1457, 1476 (S.D.N.Y. 1989).

Petitioner's motion for another correction to his sentence is based on the mistaken belief that he is now entitled under Amendment 459 to the Sentencing Guidelines to an additional credit for acceptance of responsibility. The court already applied Amendment 459, effective November 2, 1992, when it sentenced petitioner on March 12, 1993. Unlike the 1996 resentencing based on the retroactive application of Amendment 505, Amendment 459 was in effect at the time of the 1993 sentencing.

The motion for reconsideration is denied.

So ordered.

Dated: Brooklyn, New York
September 4, 1998


Eugene H. Nickerson, U.S.D.J.